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September 26, 1996

VIA HAND DELIVERY

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: FCC WT Docket No. 96-148;
Geographic Partitioning and Spectrum
Disaggregation by Commercial Mobile Radio
Licensees; Notice of Proposed Rulemaking
EX PARTE

Dear Mr. Caton:

The Rural Telecommunications Group ("RTG") takes this opportunity to respond to the reply comments filed by U S WEST, Inc. ("U S WEST") in the above-captioned proceeding for the purpose of correcting several misstatements in U S WEST's characterization of both RTG's and the Federal Communication Commission's ("FCC" or "Commission") arguments and statements made with regard to the participation of rural telephone companies in the provision of broadband personal communications services ("PCS").

U S WEST takes great exception to RTG's proposal that the Commission retain its current rule reserving for rural telephone companies ("rural telcos") the exclusive right to partition broadband PCS licenses. U S WEST cites the Commission for the proposition that, "under the current 'rural telco-only' partitioning rules, large chunks of spectrum in rural areas will likely not be used at all or not be used fully."¹ The Commission's actual words are,

¹ U S WEST Reply Comments at 5.

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“[w]e tentatively conclude that a more liberal partitioning policy would allow spectrum to be used more efficiently, speed service to underserved areas, and increase competition.”² This “tentative” and very general conclusion is a far cry from the interpretation U S WEST has given it. Accordingly, there is no basis for US West's assertion that the Commission thinks “large chunks of PCS spectrum in rural areas” will go to waste if only rural telcos can partition.

US WEST contends that there are some rural telcos and trade associations that oppose RTG's position, but references only two — Liberty Cellular and the National Rural Telecommunications Cooperative (“NRTC”). Contrary to US West's assertion, NRTC does not oppose RTG's position. On September 12, 1996, NRTC filed an *ex parte* letter with the Commission clarifying and revising its comments in this proceeding, in which it states “NRTC does not advocate expansion of partitioning beyond rural telephone companies. In particular, it does not support any proposal that would reduce the preference that already permits rural telephone companies alone to partition PCS licenses covering their wireline service areas.”³ NRTC specifically indicates that its clarified position contravenes the position US WEST has attributed to it in footnote 20 of its reply comments.⁴

US WEST also cites Liberty Cellular, Inc. (“Liberty”) as a rural telco opposed to retention of the partitioning exclusivity right. Nowhere in Liberty's comments does it characterize itself as a rural telco concern, but rather, it is described as an entity owned by twenty-five local exchange carriers with numerous service interests other than wireline telephone service that lie within Kansas Rural Service Areas.⁵ Liberty's interest in abolishing the exclusive rural telco partitioning right appears to lie primarily in achieving the ability to expand services beyond its current service area.⁶ The Commission's rules permit a rural telco to use a partitioned license to serve twice the population of its existing wireline service area.⁷ As rural telcos know, doubling the pops in one's service territory can mean covering a substantial amount of geographic area, due to the physical location of subscribers. RTG doubts whether any rural telco would forego an exclusive right to partition a PCS license for the ability to serve more ground than the generous amount already permitted under the current

² *In re Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees, Notice of Proposed Rulemaking*, WT Docket No. 96-148 (released July 15, 1996) (“*Partitioning NPRM*”), at ¶ 16.

³ *Ex Parte* Letter of NRTC, September 12, 1996, at 2 (emphasis in original).

⁴ *Id.*

⁵ Comments of Liberty Cellular, Inc. at 1.

⁶ *Id.* at 2.

⁷ 47 C.F.R. § 24.714 (d)(3)(note).

rules. It appears that Liberty filed its comments as a non-rural telco entity with varied service interests, not as a rural telco concern. Thus, U S WEST has no support for its statement that some rural telcos do not advocate retention of the exclusive partitioning right.

U S WEST also erred in stating that RTG relies on Section 309(j)(3) of the Communications Act of 1934, as amended, for its statement that rural telcos have the exclusive right to obtain a partitioned license.⁸ If U S WEST had undertaken a more careful reading of RTG's comments, it would see that RTG attributes the exclusive right to partition not to the Communications Act, but to the Commission's own pronouncement in the *Competitive Bidding Fifth Report and Order*, in which the Commission established geographic partitioning provisions for rural telcos.⁹ US WEST maintains that "there is no right, much less an 'exclusive right,' which affords only rural telcos the opportunity to obtain partitioned licenses."¹⁰ RTG directs US WEST's attention to the *Competitive Bidding Fifth Report and Order* and Section 24.714 of the Commission's Rules which clearly limit the partitioning right to rural telephone companies. Moreover, if rural telcos do not have an exclusive right to partition broadband PCS licenses, why has the Commission issued a Notice of Proposed Rulemaking to consider permitting non-rural telcos to do the same? US West characterizes rural telco comments in this proceeding as "boast[ing] of their competitive advantage over all other potential PCS market entrants."¹¹ What US WEST perceives as "boasting" on the part of RTG is actually RTG's restatement of the Commission's own rationale for adopting the exclusive partitioning rules. The Commission said of rural telcos that "their existing infrastructure makes [them] well suited to introduce PCS services rapidly into their service areas and adjacent areas."¹² In response to the overwhelming request by rural telcos to establish an exclusive partitioning arrangement, the Commission stated,

We believe that these proposals have merit, and therefore we now adopt a license partitioning system to provide these designated entities the enhanced opportunity to participate in the provision of broadband PCS and to deploy broadband PCS in their rural service areas rapidly.¹³

⁸ U S WEST at 6.

⁹ *In re Implementation of Section 309(j) of the Communications Act — Competitive Bidding, Fifth Report and Order*, 9 FCC Rcd 5532, 5597-9 (1994) ("*Competitive Bidding Fifth Report and Order*").

¹⁰ U S WEST at 7.

¹¹ *Id.* at 8.

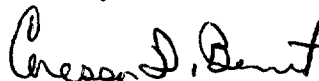
¹² *Competitive Bidding Fifth Report and Order* at 5597.

¹³ *Id.* at 5598.

RTG's reiteration of the inherent qualities possessed by rural telcos, which enable them to ensure the most rapid delivery of broadband PCS services to rural America, is not a boast, but a reminder to the Commission of the facts it already knows exist.

US WEST believes that retention of the exclusive partitioning rule would deprive residents in rural areas of the ability to "enjoy any of the competitive choices available to their urban counterparts."¹⁴ US WEST maintains that both Congress and the Commission have made it clear that the interests of rural consumers are best served by increasing the number of competitive choices available to them.¹⁵ Yet neither Congress nor the Commission has shown that anyone other than rural telcos has an interest in undertaking the expensive and arduous task of delivering a new telecommunications service to the far flung corners, highest peaks and lowest valleys of rural America. As RTG carefully explained in its comments, the current partitioning rules obligate rural telcos to include all portions of its wireline service area in any acquired partitioned area.¹⁶ Entities other than rural telcos, who must build a PCS infrastructure from scratch, have no obligation to cover the population served by an incumbent rural telco provider. The Commission's lenient build-out requirements actually encourage the avoidance of speeding service to remote or hard-to-reach customers, because the mandatory two-thirds population coverage can be more easily met by serving the largest established communities within the partitioned service area first.¹⁷ Should the Commission choose to forget the importance of rural telcos' existing infrastructure and loyalty to its customer base and eliminate the exclusive partitioning right, there is no guarantee, or even a good chance, that alternative providers will deliver broadband service to rural customers more rapidly than the incumbent rural telco can, if the service is delivered at all.

Sincerely,



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Counsel for the

Rural Telecommunications Group

¹⁴ U S WEST at 9.

¹⁵ *Id.* at 10.

¹⁶ *Competitive Bidding Fifth Report and Order* at 5598; see also 47 C.F.R. § 24.714(d).

¹⁷ *Partitioning NPRM* at ¶¶ 33-4.

Certificate of Service

I, Melissa Fistner, an employee of the Law Offices of Bennet & Bennet, PLLC certify that on this 26th day of September, 1996, I mailed by United States mail, postage prepaid, a copy of the foregoing Ex Parte Letter:

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